Supreme Court, U.S.
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85-1137

NO.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

CECILIA ELSTON, ET AL.
Petitioners

versus

BOARD OF LEVEE COMMISSIONERS
OF THE ORLEANS LEVEE DISTRICT
OF THE STATE OF LOUISIANA, ET AL.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE FOURTH CIRCUIT COURT OF APPEAL STATE OF LOUISIANA

VOLUME II

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SUCCESSION OF BURAT (BURAS) NO. CA 1518

VS FOURTH CIRCUIT

THE BOARD OF LEVEE COMMISSIONERS, ET AL COURT OF APPEAL

STATE OF LOUISIANA

APPEAL FROM THE TWENTY-FIFTH JUDICIAL DISTRICT COURT, PLAQUEMINES PARISH, LOUISIANA, HONORABLE JULIAN E. BAILES, PRESIDING JUDGE PRO TEMPORE

PHILIP C. CIACCIO,
JUDGE

(Court composed of Judges William V. Redmann, Robert J. Klees and Philip C. Ciaccio)

Redmann, J. concurs.

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AFFIRMED

April 26, 1985

Succession of Burat (Buras) CA 1518

Plaintiffs, heirs of Hubert Burat, filed this appeal from an adverse judgment of the district court which sustained the defendant's exception of thirty (30) years acquisitive prescription. Defendants answer the appeal and request that this Court amend the lower court judgment to recognize its rights under their exception of ten (10) years acquisitive prescription and their exception of peremption based upon tax sales. We affirm the judgment of the district court.

The Succession of Hubert Burat (Buras) brought this petitory action to recover sections 29 through 32 of Township 19 south, range 16 east, which land is located opposite Buras, Louisiana, on the left descending bank of the Mississippi River in Plaquemines Parish. Additionally, the suit seeks an accounting and damages for wrongful possession. In response to the suit, defendants, the Board of Levee Commissioners of the Orleans Levee District,

Chevron U.S.A. Inc., Chevron Pipe Line Company, Gulf Refining Company, Louisiana Power and Light Company, Shell Oil Company, Estate of William G. Helis and Helis Enterprises, Inc., filed exceptions of peremption and ten and thirty years acquisitive prescription.

The facts of this case are as follows:

During the reign of the Spanish Soverign [sic] and prior to the Louisiana Purchase, Hubert Burat settled the tract of land in question, which was located some sixty miles below New Orleans on the east bank of the Mississippi River. In 1803, the Louisiana Purchase incorporated this land into the United States, pursuant to its purchase of Louisiana from the Republic of France.

In 1836, an erroneous federally commissioned survey showed Burat's four sections of land to be other than where they were actually located and it also showed the sections actually

settled and occupied by him to be vacant. The error resulted in two lines of title, as other persons filed claim against this land which the survey showed as vacant.

Burat filed a private claim to Sections 29 through 32 of Township 19 south, Range 16 east, which claim was assigned Number 60. In 1837 a federal land register and recorder included Burat's corrected claim in his report to Congress. In 1842 Congress confirmed Burat's ownership of the land by a special legislative act (July 6, 1842, 5 Stat. 491). On October 24, 1885 the Burat claim was surveyed and the plat authenticated. On October 30, 1885 the Registrar and Receiver issued a patent certificate (No. 166) to the Burat tract. In 1972 the United States issued a patent for the land to Hubert Burat, his heirs and assigns. (Patent No. 1242435 of May 24, 1972, recorded COB 380, folio 351).

In the interim, squatters and persons purporting to have ownership from an erroneous claim of title took turns in occupying the land. In 1838 and 1839 patents were issued to these claimants. Their interest was assigned to Andrew Hodge, Jr. Hodge sold section 30 of the land to Joseph and Matilda Cavalier, by deed dated August 12, 1841 which was recorded September 6, 1948. He sold section 31 to William and Mary Jansen, by deed dated August 12, 1841 and the deed was recorded December 10, 1942. Following his death, Hodge's legal representatives, in 1861, reconveyed, Section 29 and 32 back to the United States. In turn they received a refund of the monies Hodge had paid for the property. Hodge quitclaim to the United States any rights or title he held in Sections 30 and 31 of the tract.

In 1924 through 1926, the Levee Board of the Orleans Levee District acquired the title to this

land when it expropriated the property for the Bohemia Spillway. The remaining defendants were granted leasehold interests from the Levee Board.

The issues presented are: (1) What was the nature of Burat's claim and when did his title to this land come into existence? (2) Can the Levee Board acquire title by prescription and if so, is such acquisition unconstitutional? (3) Did the trial court err in finding that the Levee Board acquired ownership of this land by thirty years acquisitive prescription.

Federal Question:

Burat Title

The plaintiffs contend that the Burat heirs did not acquire title to the subject tract of land until the United States issued a patent to them in 1972 and it is from this date that prescription began to run. They contend that the trial court erred in finding that the Burat heirs received title in

1842 when their claim was confirmed by the Land Department of the federal government. According to the plaintiffs, title could not have passed in 1842 because the United States did not have title at that time. Thus, the plaintiffs reason that the federal government acquired title when it bought back the title from Hodge to sections 29 and 32 of this tract of land in 1861. Further, with regard to sections 30 and 31 plaintiff contends there existed a confirmed claim but it was not satisfied until 1972 when the patent was issued. It was then, plaintiffs contend, that title passed to them and prescription began to run.

Law

The nature of a settler's claim determines when title to land passes to the claimant. Title to land which rested upon claims which had been perfected and complete, according to the laws of the soverign, prior to acquisition of the territory

by the United States did not vest title in the United States, and did not constitute conveyances by the United States. See: Nixon v. Houillon, 20 La. Ann. 515 (1868).

Title to land which relied upon claims which were not perfected and which were incomplete on the date of the Louisiana purchase vested equitable rights with the claimant, such that title vested, at the confirmation of the claim. (Title by possession) Breaux v. Lefort, 209 La. 506, 24 So.2d 879 (1946). (Land grants) Joplin v. Chachere, 107 La. 522, 32 So. 243 (1902); See: Laurence v. Longdeau, 88 U.S. 521, 21 Wall 521 (U.S., 1975).

Hubert Burat filed his private land claim in 1837 founded upon his occupancy and possession prior to 1803. This claim No. 60 was reported favorably to Congress for confirmation on November 22, 1837. The claim was confirmed in 1842. Act, July 6, 1842 (5 Stat. 491).

The trial court correctly concluded that title passed from the United States to Hubert Burat, on Sections 29, 30, 31 and 32 of this tract of land, in 1842 when this private claim was confirmed and not 1972 as claimed by plaintiffs. That is, Burat's claim arose from possession and occupancy of the land while under the reign of the foreign soverign. The claim was incomplete when the land was ceded to the United States. This claimant possessed an equitable right which, upon confirmation, vested title in Burat. Thus we also agree with the conclusion reached by the trial court that the subsequent patent which was issued to Burat in 1972 was "only documentary evidence of that title." Moreover, since a vested right to a patent of public lands is treated as a patent in fact issued, the patent, when issued, relates back to the filing of the entry. See: Steinspring v. Bennett, 16 La. Ann. 201 (1861). See: State of Wyoming v. United States, 255 U.S. 489, 41 S.Ct. 393 (U.S., 1921).

Hodge Patent

The United States held only naked legal title to this land at the time that it issued the Andrew Hodge patent. The full equitable title rested with Hubert Burat, who had performed all of the requirements necessary for the patent to be issued to him. Thus, the United States did not possess the authority to pass title to Hodge in 1838 and 1839. See: Barton's Executor v. Hempkin, 19 La. 510 (La., 1841). The patent which Andrew Hodge obtained through error was therefore void. See: Lott v. Prudhomme, 3 Rob. 293 (La., 1842) McGill v. McGill, 4 La. Ann. 262 (La. 1849), Proctor v. Painter, 15 2d 974 (U.S., 1926).

Plaintiff argues that Hodge was a good faith purchaser and his rights being plenary, they were immune from attack.

The general rule is that a patent to land which has been previously sold granted or reserved

is void. Gould and Tuker, Title XXXII-The Public Lands-Chapter IV pp. 527-528. However, an exception exists when the title to the land has passed to a bona fide purchaser without notice. Gould and Tuker, supra.

We reject the plaintiff's contention that Hodge was a bona fide purchaser whose rights in title were immune from challenge. A bona fide purchaser is one who purchases property for value, without any notice of defect.

With regard to Sections 29 and 32 of the tract of land, the Hodge heirs acknowledged the defect in their title when they applied to Secretary of the Treasury for a refund. The request for refund contained the following language:

> Whereas, the Act Of Congress passed on the 12th day of January 1825 entitled an act authorizing repayment of land erroneously sold by the United States provides that whenever the sale of a tract of land by the United States is void for want of title thereto in the United

> States or from any other cause whatever, the money paid on the same will be refunded by the Secretary of the Treasury. And, whereas, the lots or sections herein below described . . . are covered . . . Sections 29 and 32 of Township 19S of Range 16E by the private claim of Hubert Burat, Certificate No. 60 . . . [the instrument also describes other tracts of land and with respect to each such tract sets out the title which was deemed to be superior to the title to such land purchased by Hodge]. Now Know Ye that for and in consideration of the sum of . . ., I, H.F. Deblieux, . . . hereby sign, transfer, relinquish and surrender to the United States all our rights, title, interest and claim of, in and to the land hereinabove described. (emphasis added).

Moreover, assuming arguendo that Hodge was initially a purchaser in good faith, only he, his heirs or transferees in title, if any, could claim the benefit of that status. Hodge's heirs abandoned any such claim by executing the quitclaim to the Government on Sections 29 and 32 of the tract. As between Hodge's heirs and the United States government, the initial transaction was void ab initio and

of no legal effect whatsoever, thus returning the parties to their original status.

This quitclaim did not create a new legal title in the United States, but only served to remove any cloud that may have been placed on the equitable title held by Hubert Burat. Absent a new legal title in the United States, no interruption of prescription took place. That is, since the title was in Burat since 1842, prescription began to run from that date and contrary to the plaintiff's contention, prescription was not interrupted because of retention of any real rights in the United States Government.

Furthermore, the Hubert Burat heirs are not transferees in title of Hodge (on Sections 29 and 32) nor are they transferees of Champagne and Jansen (on Sections 30 and 31). They therefore have no standing to assert their claim on behalf of Hodge or his estate nor on behalf of any transferees or heirs of Champagne and Jansen.

Prescription

Constitutional Issue

Plaintiffs contend that the statute which enabled the Levee Board to acquire this tract of land did not provide that it could deprive citizens of their title without compensation. Thus, they reason that since the Burats did not receive compensation for the land that the Levee Board's actions constitute a deprivation of property without due process of law. U.S. Const., 14 Amend. We disagree.

The Levee Board did purchase or expropriate these lands before taking possession of them. The Burats were not the recipients of the compensation, because as correctly pointed out by the trial court:

> "[T]he title of the Burats to all the tracts involved in this suit had been divested long before the Levee Board took possession of the property."

Accordingly, there was no deprivation of property without due process of law.

The plaintiffs next argue that, since the Levee Board may prescribe against citizens but citizens are not allowed to prescribe against the Levee Board, this policy violates the equal protection clause of the constitution. U.S. Const., 14 Amend.; La. Const. Art. 1 Sec. 3. R.S. 38:295.

The United States Supreme Court and this state's appellate courts have sanctioned such a policy as being "founded upon the public good and [for] the protection and preservation of the public interest." Stanley v. Schwalby, 147 U.S. 500 at 504, 13 S.Ct. 416 at 421 (1893). Lincoln Parish School Board v. Ruston College, 162 So.2d 419 (La. App. 2nd Cir. 1964).

Distinctions between classes of individuals or persons are permissible if they are reasonable, and not arbitrary, but rest upon some

ground of difference which has a rational relationship to the object of the classification. See: Detraz v. Fontana, 416 So.2d 1291 (La., 1982).

Since there exists a rational basis for distinguishing between the Levee Board and private individuals, with regard to acquisitive prescription, such a policy does not constitute a constitutional denial of equal protection.

Acquisitive Prescription

The trial court found that the defendants had clearly and adequately demonstrated proof of thirty years acquisitive prescription. The court reasoned as follows:

> "This court adopts as its conclusion the following expressions in defendants' brief. These conclusions are fully supported by the records which this court heard from the stand and perused from the record.
>
> The Levee Board established sufficient possession by itself and its lessees for a thirty year prescriptive title within boundaries and a ten and thirty year

> prescriptive title under the deeds by which it and its predecessors hold. Possession of the Levee Board's predecessors in title was sufficiently proved. * * *.
>
> * * *
>
> ' * * * [C]onsidering the nature of the terrain, the trapping, cattle grazing, and myriad other acts of possession of this property show actual corporeal possession over all of it. For this type of land, possession could hardly be shown more conclusively.
>
> ' * * * The land involved consists of several contiguous tracts. As to a part of each of these individual tracts, defendants have shown possession by the predecessors in title of the Levee Board. Additionally, as to each tract of land involved in this suit, defendants have shown possession by the Levee Board of its lessees for at least thirty years prior to commencement of plaintiff suit.
>
> * * * The possession of a part constitutes constructive possession of the whole of each respective tract, which tracts in the aggregate constitute all of the land involved in this suit."

The plaintiffs contend that defendants have failed to prove thirty year acquisitive prescription based upon possession under title. We disagree.

The ownership of an immovable is prescribed for by thirty years, without need for title or possession of good faith. C.C. Art. 3499 (1870). However, all the rules governing prescription under good faith possession are applicable to prescription under bad faith possession except those which are contrary or incompatible. C.C. Art. 3505 (1870). In the case of thirty year prescription founded upon just title, the possessor's good faith is not a consideration. C.C. Art. 3475 (1870) (now, C.C. Art. 3486). Rather, the possessor must only show just title and thirty years possession. In the case of thirty years possession plus title, corporeal possession of a part of the immovable shall be deemed to be constructive possession of the whole within the limits of the title. C.C. Art. 3498 (1870). See also: C.C. Art. 3426 (1982), comment (d), and Hill v. Richey, 221 La. 402, 59 So.2d 434 (1952). Moreover, in such possession cases, the

predecessor's possession may be tacked in order to fulfill the thirty years possession of the current owner. C.C. Arts. 3493-3495 (1870) (now C.C. Arts. 3441 and 3442). See: Bartlett v. Calhoun, 412 So.2d 597 (La., 1982).

The plaintiffs allege that defendants cannot rely upon constructive possession of the land in order to establish ownership by thirty years possession. They reason that the Levee Board acquired the land by several different deeds, each of which described a different tract. Thus, plaintiffs cite Screen v. Trainer for authority. 172 La. 51, 133 So. 359 (La. 1931).

The Screen decision supra does not apply to the facts of this case. That decision involved a large tract of land which was acquired piecemeal by different deeds, thus, the actual possession was only deemed to extend to the limits of the deed covering the tract possessed. Accordingly the facts of that

case are distinguishable from this case. In this case the trial judge found that the defendants proved possession of each tract of the land by the Levee Board and by its predecesors and that finding was clearly supported by the record.

Plaintiffs contend that defendants, being bad faith possessors, cannot benefit from their predecessor's good faith possession. The plaintiffs rely upon Bartlett v. Calhoun for this position. 412 So.2d 597 (La. 1982). The Bartlett decision, supra, does not prevent such tacking of possession in order to complete a thirty year prescriptive period. Thus Bartlett, supra, is inapposite.

Plaintiffs allege that the defendant, Levee Board, failed to prove "just title". They contend that the inaccuracies of the Brodtman Plat, which was utilized to establish title, makes the title fatally defective. A review of the record indicates that various deeds, maps and abstracts of the land

were utilized, in conjunction with expert testimony, to establish the Levee Board's just title. An expert for the defendant testified that the title was clearly established, even without the inclusion of the defective Brodtman plat. The trial court apparently found that just title had been proved and this finding will not be disturbed, as it is supported by the record.

In conclusion, plaintiffs allege that possession cannot be inferred from title. We agree. In this case, however, for the reasons stated, we find that defendant proved possession, as well as title.

Since we conclude that the trial court correctly found that the defendants had proven thirty years prescriptive title, we do not address the issues of thirty year prescription within boundaries or whether they held a ten year prescriptive title or established peremptive rights as a result of tax sales.

For the reasons assigned the judgment of the district court is affirmed at appellant's cost.

AFFIRMED

TWENTY-FIFTH JUDICIAL DISTRICT COURT

PARISH OF PLAQUEMINES

STATE OF LOUISIANA

NO. 14-706

SUCCESSION OF HUBERT BURAT (BURAS)

VS.

BOARD OF LEVEE COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT, ET AL

REASONS FOR JUDGMENT

This is a petitory action brought by the Succession of Hubert Burat against the Board of Levee Commissioners of the Orleans Levee District, Chevron U.S.A. Inc., Chevron Pipe Line Company, Gulf Refining Company, Louisiana Power and Light Company, Shell Oil Company, Estate of William G. Helis and [illegible]s Enterprises, Inc., all of whom claim

an interest in the subject property adverse to that asserted by plaintiffs. As Hubert Burat, the original claimant and ancestor from whom this title devolved, died in 1847, his descendants at this time are too numerous to name (now number some 1200 persons) and the plaintiffs as such are representatives of the class.

The plaintiffs, and their ascendants, have been out of possession of the subject area for over one hundred years. Specifically the lands involved in this litigation are Sections 29, 30, 31 and 32, Township 19 South, Range 15 East, all located and fronting on the left descending bank of the Mississippi River opposite Buras, Plaquemines Parish, Louisiana. All of the subject lands are now a part of the Bohemia Spillway which was authorized by Act 99 of 1924 as a flood control facility by the legislature of the state of Louisiana, and was to be acquired and built by the Orleans Levee District.

All defendants herein, except the Orleans Levee District derived their occupancy and possession through the levee board.

To this action of the plaintiffs, the defendants filed exceptions of ten and thirty years acquisitive prescription and of peremption resulting from numerous tax sales which transpired earlier.

The plaintiffs, in the main, defend against these exceptions by seeking to show that title never passed from the United States until the latter issued a patent to Hubert Burat, his heirs and assigns in the year 1972. It is an historical fact that the United States acquired Louisiana from the Republic of France in the year 1803 during the term of office of President Thomas Jefferson.

Hubert Burat filed a private claim to Sections 29, 30, 31 and 32, Township 19 South, Range 16 East (being the same land herein concerned) which was assigned claim No. 60 and

Congress by appropriate act (July 6, 1842, 5 Stat. 491) approved and confirmed the claim.

There is obvious confusion in this chain of title created by the fact that the United States made a disposition of this property to persons other than its rightful claimant who in turn assigned their interest to Andrew Hodge, Jr. It was during the administration of President Van Buren that Andrew Hodge, Jr. received, as assignee of the original purchasers (Section 29, assignors, Pierre Paul Orryac and Josephine Josse; Section 30, assignors Matilde Cavalier and Joseph Cavalier; Section 31, William Jansen and Mary Towns; and Section 32, Adeline Cavalier and Edmond Cavalier) all in spite of the peremptive rights of Hubert Burat to this identical land. There is proof herein that Hubert Burat occupied and possessed this land prior to the 1803 acquisition of Louisiana by the United States. During his lifetime Andrew Hodge, Jr. sold whatever

rights he had in Sections 30 and 31. This is evidenced by deed dated August 12, 1841 and recorded September 6, 1848, conveying to Matilda Cavalier and Joseph Cavalier Section 30 (being the same parties from whom Andew [sic] Hodge, Jr. had acquired this property) and by deed dated August 12, 1841 and recorded December 10, 1842 to Mary Towne and William Jansen Section 31.

Further, it appears that following Hodge's death his legal representative made application for and was granted a refund for the monies Hodge had paid for the property and the land, Sections 29 and 32, was reconveyed to the government, the basis for such being the fact that Burat had a superior claim. It was on that reason that when Cyprien Burat, a son of Hubert Burat, made application for a patent certificate it was approved on October 24, 1885 for the four sections described therein and being the subject four sections.

The same facts and reasons which operated to void the previously issued patents in the name of Andew [sic] Hodge, Jr. to Sections 29 and 32 also voided the previously issued patents to land subsequently by Andrew Hodge, Jr. Outstanding at the time the original void patents were issued to Andrew Hodge, Jr. the Burat claim No. 60 had been already approved by the bureau and thereafter Congress confirmed the patent.

The position of the plaintiffs cannot stand the test. There can be no dispute that the U.S. Congress in 1842 did, in fact, confirm the claim of Burat to the lands in dispute. It was at that time that title passed from the United States to Hubert Burat. See Langdeau v. Hines, 88 U.S. 521, 22 L. Ed. 606 (1875). Therein the U.S. Supreme Court stated:

> " * * * If the claim be to land with defined boundaries, or capable of identification, the legislative confirmation

> perfects the title to the particular tract, and a subsequent patent is only documentary evidence of that title. * * *."

Following this rationale, which this court does, the patent No. 1242435, dated May 24, 1972, COB 380, folio 351 (Abstract Vol. II, page 438) is nothing more that [sic] documentary evidence of that title. This patent specifically refers to claim No. 60 of Hubert Burat and recites that this claim "was confirmed by Section 3 of the Act of July 6, 1842 (5 Stat. 491) and that the said claim has been regularly surveyed and described as follows:

St. Helena Meridian, Louisiana
T. 19 S., R. 16 E.,
Sec. 29, All;
Sec. 30, All;
Sec. 31, All;
Sec. 32, All.

* * *."

Further, the patent contains the usual stipulation and condition:

> "This patent shall only operate as a relinquishment of title on the part of the United States, and shall in no manner interfere with any valid adverse right to the same land, nor be construed to preclude a legal investigation and decision by the proper judicial tribunal between adverse claimants to the same land."

This court finds, and so holds, that the title to Sections 29, 30, 31 and 32 was legally severed from the United States when by act of Congress, above referred to, in 1842 it confirmed the claim no. 60 of Hubert Burat.

Passing now to the issue of thirty years prescription pleaded by the exception of the defendants, it is found that exceptors have clearly and adequately demonstrated the requisite proof to sustain their position.

This court adopts as its conclusion the following expressions in defendants' brief. These conclusions are fully supported by the records which this court heard from the stand and perused from the record.

"The Levee Board established sufficient possession by itself and its lessees for a thirty year prescriptive title within boundaries and a ten and thirty year prescriptive title under the deeds by which it and its predecessors hold. Possession of the Levee Board's predecessors in title was sufficiently proved. * * *.

"The Burats urge that, because, under a 1964 statute, prescription can not now run against the Levee Board, it cannot run in the Levee Board's favor. The holding in Lincoln Parish School Board v. Ruston College, 162 So.2d 419 (2nd Cir. 1964), cert. denied, 164 So.2d 354, and Stanley v. Schwalby, 147 U.S. 508, 37 L.Ed. 259 (1893) are dispositive of this issue. These decisions respectively hold that the State of Louisiana or its agencies and the United States, or its agents, can acquire title to land by adverse possession notwithstanding that prescription does not run against the state or federal govern-

ments. The Burats point out that the act pursuant to which the Bohemia Spillway was constructed required that the Levee Board purchase or expropriate the lands before taking possession of them. That is precisely which the Levee Board did. The title of the Burats to all the tracts involved in this suit had been divested long before the Levee Board took possession of the property. * * *.

"* * *[C]onsidering the nature of the terrain, the trapping, cattle grazing, and myriad other acts of possession of this property show actual corporeal possession over all of it. For this type of land, possession could hardly be shown more conclusively.

"* * * The land involved consists of several contiguous tracts. As to a part of each of these individual tracts, defendants have shown possession by the predecessors in title of the Levee Board. Additionally, as to each tract of land

involved in this suit, defendants have shown possession by the Levee Board and its lessees for at least thirty years prior to commencement of plaintiffs' suit.

* * * The possession of a part constitutes constructive possession of the whole of each respective tract, which tracts in the aggregate constitute all of the land involved in this suit."

As this court finds the defendant-exceptors have sustained the burden of proof of establishing thirty years prescriptive title, there is no need to consider the ten year prescriptive period or the peremption as applied to the tax sales.

The exception of thirty years prescriptive title is sustained and accordingly, plaintiffs' demands are rejected at their costs.

Natchitoches, La., June 14, 1983.

/s/
JUDGE PRO TEMPORE

COURT OF APPEAL, FOURTH CIRCUIT
STATE OF LOUISIANA

Clerk's Office, New Orleans, May 29, 1985

Dear Sir:

REHEARING WAS THIS DAY REFUSED IN THE CASE ENTITLED SUCCESSION OF BURAT (BURAS) v. THE BOARD OF LEVEE COMMISSIONERS, ET AL.

NO. CA-1518

Very truly yours,

MARJORIE R. CAMBRE, Clerk

THE SUPREME COURT OF THE STATE OF LOUISIANA

SUCCESSION OF
HUBERT BURAT (BURAS)

VS. NO. 85-C-1311

BOARD OF LEVEE COMMISSIONERS OF
ORLEANS LEVEE DISTRICT, ET AL

IN RE: Burat, Hubert Succession of; Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fourth Circuit, Number CA 1518; Parish of Plaquemines 25th Judicial District Court Div. "B" Number 14-706

October 4, 1985

Denied.

JAD

WFM

FAB

JCW

DENNIS & LEMMON, J.J., would grant the writ.

CALOGERO, J., recused for the reason that prior to becoming a justice of this Court in a case involving these same parties and in closely allied litigation, he represented as an attorney certain of the parties who are included in the class herein.

Supreme Court of Louisiana
October 4, 1985

/s/
Clerk of Court
For the Court

Act of Congress, March 26, 1804
(2 Stat. 283)

An Act erecting Louisiana into two territories, and providing for the temporary government thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of country ceded by France to the United States, under the name of Louisiana, which lies south of the Mississippi territory, and of an east and west line to commence on the Mississippi river, at the thirty-third degree of north latitude, and to extend west to the western boundary of the said cession, shall constitute a territory of the United States, under the name of the territory of Orleans; the government whereof shall be organized and administered as follows:

* * *

Sec. 14. And be it further enacted, That all grants for lands within the territories ceded by the French Republic to the United States, by the treaty of the thirtieth of April, in the year one thousand eight hundred and three, the title whereof was, at the date of the treaty of St. Ildefonso, in the crown, government or nation of Spain,

and every act and proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatsoever authority transacted, or pretended, be, and the same are hereby declared to be, and to have been from the beginning, null, void, and of no effect in law or equity. (a) Provided nevertheless, that any thing in this section contained shall not be construed to make null and void any bona fide grant, made agreeably to the laws, usages and customs of the Spanish government to an actual settler on the lands so granted, for himself, and for his wife and family; or to make null and void any bona fide act or proceeding done by an actual settler agreeably to the laws, usages and customs of the Spanish government, to obtain a grant for lands actually settled on by the person or persons claiming title thereto, if such settlement in either case was actually made prior to the twentieth day of December, one thousand eight hundred and three: And provided further, that such grant shall not secure to the grantee or his assigns more than one mile square of land, together with such other and further quantity as heretofore hath been allowed for the wife and family of such actual settler, agreeably to the laws, usages and customs of the Spanish government. And that if any citizen of the United States, or other person, shall make a settlement on any lands belonging to the United States,

within the limits of Louisiana, or shall survey, or attempt to survey, such lands, or to designate boundaries by marking trees, or otherwise, such offender shall, on conviction thereof, in any court of record of the United States, or the territories of the United States, forfeit a sum not exceeding one thousand dollars, and suffer imprisonment not exceeding twelve months; and it shall, moreover, be lawful for the President of the United States to employ such military force as he may judge necessary to remove from lands belonging to the United States any such citizen or other person, who shall attempt a settlement thereon.

Act of Congress No. 701, March 2, 1805
(2 Stat. 324)

No. 701 - An Act for ascertaining and adjusting the titles and claims to land, within the Territory of Orleans, and the District of Louisiana.

* * *

Sec. 2. . . . every person, or to the legal representative or representatives of every person, who being either the head of a family of twenty-one years of age, had prior to the twentieth day of December, one thousand eight hundred and three, with the permission of the proper Spanish officer, and in conformity with the laws, usages, and customs of the Spanish Government, made an actual settlement on a tract of land within the

said territories, not claimed by virtue of the preceeding section, or of any Spanish or French grant made and completed before the first day of October, one thousand eight hundred, and during the time the government which made such grant had the actual possession of the said territories, and who did on the said twentieth day of December, one thousand eight hundred and three, actually inhabit and cultivate the said tract of land; the tract of land thus inhabited and cultivated, shall be granted. . . .

* * *

Sec. 4. . . . every person claiming lands . . . shall, before the first day of March, one thousand eight hundred and six, deliver to the register of the land office, or recorder of land titles, within whose district the land may be, a notice of writing, stating the nature and extent of his claims, together with a plat of the tract or tracts claimed; and shall also, on or before that day, deliver to the said register or recorder, for the purposes of being recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim; and the same shall be recorded by the register or recorder, or by the translator herein after mentioned, in books to be kept by them for that purpose, on receiving from the parties at the rate of twelve and an half cents for every hundred words con-

tained in such written evidence of their claim. . . . And if such person shall neglect to deliver such notice in writing of his claim, together with a plat as aforesaid, or cause to be recorded such written evidence of same, all his right, so far as the same is derived from the two first sections of this act, shall become void, and for ever thereafter be barred; nor shall any incomplete grant, warrant, order of survey, deed of conveyance, or other written evidence, which shall not be recorded as above directed, ever after be considered or admitted as evidence in any court of the United States. . . .

Sec. 5. . . . Each board, or a majority of each board, shall, in their respective districts, have power to hear and decide in a summary manner, all matters respecting such claims, also to administer oaths, to compel the attendance of, and examine witnesses, and such other testimony as may be adduced, to demand and obtain from the proper officer and officers, all public records, in which grants of land, warrants, or orders of survey, or any other evidence of claims to land, derived from either the French or Spanish Governments may have been recorded; to take transcripts of such record or records, or any part thereof; to have access to all other records of a public nature, relative to the granting, sale, transfer, or titles of lands, within their respective districts;

and to decide in a summary way, according to justice and equity, on all claims filed with the register or recorder, in conformity with the provisions of this act. . . .

Act of Congress, February 28, 1806
(2 Stat. 352)

An Act extending the powers of the Surveyor-general to the territory of Louisiana; and for other purposes.

* * *

Sec. 3. And be it further enacted, That so much of the act, intituled "An act for ascertaining and adjusting the titles and claims to land within the territory of Orleans and the district of Louisiana," as makes it the duty of every claimant to lands, within the territory of Louisiana, to deliver to the recorder of land titles a plot of the tract or tracts, claimed by him, be, and the same is hereby repealed, so far as relates to claimants whose tracts had not been surveyed by the proper officer, under the Spanish government, prior to the twentieth day of December, one thousand eight hundred and three. And the commissioners appointed for ascertaining the titles and claims to lands, within either the territory of Louisiana, or that of Orleans, are hereby authorized to direct the officer exercising the powers of surveyor-general, within the

same, to execute such surveys as they may think necessary, for the purpose of deciding on claims presented for their decision: Provided, that the expense of executing such surveys shall be defrayed by the parties claiming the land, unless the same be claimed by a legal French or Spanish grant, made and completed before the first day of October, one thousand eight hundred: And provided also, and it is hereby further enacted, that every such survey, as well as every other survey, by whatever authority heretofore executed, those of the above-mentioned legal and complete titles only excepted, shall be held and considered as private surveys only; and all the tracts of land, the titles to which may be ultimately confirmed by Congress, in conformity with the provisions of the act above mentioned, shall, prior to the issuing of patents, be re-surveyed, if judged necessary, under the authority of the person exercising the powers of surveyor-general, and at the expense of the parties.

Act of Congress, April 21, 1806
(2 Stat. 391)

An Act supplementary to an act intituled "An act for ascertaining and adjusting the titles and claims to land, within the territory of Orleans, and the district of Louisiana."

Be it enacted by the Senate and House of Representatives of the United

States of America in Congress assembled, That every person or persons claiming a tract of land, by virtue of the second section of the act, to which this act is a supplement, and who had commenced an actual settlement on such tract, prior to the first day of October, one thousand eight hundred, and had continued actually to inhabit and cultivate the same, during the term of three years from the time when such actual settlement had commenced, and prior to the twentieth day of December, eighteen hundred and three, shall be considered as having made such settlement with the permission of the proper Spanish officer, although it may not be in the power of such person or persons to produce sufficient evidence of such permission.

Act of Congress, April 25, 1812
(2 Stat. 713)

An Act for ascertaining the titles and claims to Lands in that part of the Louisiana which lies east of the river Mississippi and island of New Orleans.

* * *

Sec. 5. And be it further enacted, That the said commissioners shall have power, in their respective districts, to inquire into the justice and validity of the claims filed with them as aforesaid: it shall be their duty to ascertain in every case, whether the lands claimed

have been inhabited and cultivated; at what time such inhabitation and cultivation commenced; when surveyed, and by whom and what authority; and into every other matter respecting the claims which may affect the justice and validity thereof; and for that purpose shall have power to administer oaths, and to compel the attendance of, and examine witnesses and such other testimony as may be adduced; to have access to all records of a public nature, relative to the granting, sale, transfer or titles of lands within their respective districts, and to take transcripts from such record or records or any part thereof; and the evidence thus adduced and obtained shall, by the clerk, be entered in a book to be kept for that purpose.

Act of Congress, May 11, 1820
(3 Stat. 573)

An Act supplementary to the several acts for the adjustment of land claims in the state of Louisiana.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the claims for lands within the eastern district of the state of Louisiana, described by the register and receiver of the said district, in their report to the commissioner of the general land office, bearing date the twentieth day of November, one

thousand eight hundred and sixteen, and recommended in the said report for confirmation, be, and the same are hereby, confirmed against any claim on the part of the United States.

Sec. 2. And be it further enacted, That any person or persons, claiming lands within that part of Louisiana lying west of the river Mississippi, including the island of New Orleans, founded upon any Spanish grant, concession, or order of survey, and whose claims have not heretofore been filed in the proper office, may, from and after the first day of July next, and until the thirty-first day of December thereafter, deliver notices, in writing, and the written evidences, of their claims, to the register of the land district within which such lands may be situate, within the said state, and the said notices and evidences, so delivered, within the time limited by this act, shall, by the said registers, be recorded, in books to be kept for that purpose; for which service a compensation shall be received, from such claimants at the rate of twenty-five cents for every hundred words. And the rights of such persons as shall neglect so doing, within the time limited by this act, shall, so far as they are derived from, or founded on, any act of Congress, ever after be barred, and become void, and the evidences of their claims never after admitted as evidence in any court of the United States,

against any grant derived from the United States.

* * *

Sec. 4. And be it further enacted, That every person or persons, claiming lands within that part of Louisiana described in the preceding section, founded upon any Spanish grant, concession, or order of survey, who had filed their notices of claims in the proper office, according to former laws, and whose claims have not been confirmed, may, at any time before the thirty-first day of December next, deliver additional written evidence, or other testimony, in support of their claims, the notice of which had been filed as aforesaid, to the said registers; and the evidence, so delivered, or offered, shall be recorded in books to be kept for that purpose; for which service a compensation shall be received, from such claimants, at the rate of twenty-five cents for every hundred words. And the rights of such persons as shall neglect so doing within the time limited by this act, shall, so far as they are derived from, or founded on, any act of Congress, every after be barred, and become void, and the evidences of their claims never after admitted as evidence in any court of the United States, against any grant derived from the United States.

Sec. 5. And be it further enacted, That the said registers shall, on the first day of January next, make, to the Secretary of the Treasury, a report of the claims in which additional evidences shall have been filed in their respective offices, together with the substance of the evidence so filed, with their opinion of the credit to which such evidence is entitled, and such other information as the examination of such cases, under any former law, may have placed in their power or possession.

Sec. 6. And be it further enacted, That it shall be the duty of the Secretary of the Treasury, as soon as the reports of the said registers shall be received, to proceed to the examination of the claims aforesaid, and to report to the two houses of Congress a list of the cases, which, in his opinion, ought to be confirmed, together with the reasons upon which his opinion may be founded: Provided, nevertheless, That no claim shall be so recommended for confirmation, which contains more than the quantity contained in a league square.

Act of Congress No. 17, January 12, 1825
(4 Stat. 80)

An Act authorizing repayment for land erroneously sold by the United States.

Be it enacted by the Senate and House of Representatives of the United

States of America, in Congress assembled, That every person, or the legal representative of every person, who is or may be a purchaser of a tract of land from the United States, the purchase whereof is or may be void, by reason of a prior sale thereof by the United States, or by the confirmation or other legal establishment of a prior British, French or Spanish grant thereof, or for want of title thereto in the United States, from any other cause whatsoever, shall be entitled to repayment of any sum or sums of money paid for or on account of such tract of land, on making proof, to the satisfaction of the Secretary of the Treasury, that the same was erroneously sold, in manner aforesaid by the United States, who is hereby authorized and required to repay such sum or sums of money paid as aforesaid.

Act of Congress No. 817, February 6, 1835 (4 Stat. 749)

No. 817--An Act for the final adjustment of claims to lands in the State of Louisiana.

Be it enacted, That any person or persons having claims to lands in the State of Louisiana, whose claims have been recognised by former laws as valid, but which have not heretofore been confirmed to the grantees or their legal representatives, be, and they are hereby, authorized to present their claims to the register and receiver of the land office

in which the land may lie, within two years from the passage of this act, together with the written and other testimony in support of the same, and it shall be the duty of the register and receiver to record in a book to be kept by them for that purpose, the notice of every claim so preferred, together with the evidence in support of the same; and the said register and receiver are hereby further authorized to receive any evidence for and on behalf of other individuals who may resist the confirmation of any such claim either on their own behalf, or that of the United States, and cause to be taken any evidence which shall be deemed necessary and proper by them to have such claim properly and justly settled, and to have the same likewise recorded in said book, for which service, in recording the applicant's title-papers and evidence, they shall be entitled to receive from said applicant at the rate of twenty-five cents for every hundred words.

Sec. 2. And be it further enacted, That it shall be the duty of the registers and receivers of the land offices, at or before the beginning of each session of Congress thereafter, to make to the Secretary of the Treasury a report of the claims which may have been presented before them, together with the testimony, accompanied by their opinions of the validity of each claim, and such other information respecting them as

may be in their possession, which said report shall, by the Secretary of the Treasury, be laid before Congress as soon as practicable, with the opinion of the Commissioner of the General Land Office, touching the validity of the respective claims.

Act of Congress No. 852, July 6, 1842
(5 Stat. 491)

An Act confirming certain land claims in Louisiana.

Be it enacted, That the claims to lands within the land district of New Orleans, being numbers six, seven, eight, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, thirty, thirty-four, thirty-five, thirty-eight, forty-seven, forty-eight, fifty-seven, fifty-nine, sixty, sixty-one, and sixty-two, of the two reports of the register and receiver of said land district, dated fourteenth of December, eighteen hundred and thirty-six, and second of November, eighteen hundred and thirty-seven, and made under the provisions of the act of the sixth of February, eighteen hundred and thirty-five, entitled "An act for the final adjustment of claims to lands in the State of Louisiana," be, and the same are hereby, confirmed: Provided, always, That this is only to operate as a quit-claim on the part of the United States.

* * *

Sec. 4. And be it further enacted, That numbers one, four, seven, fifteen, eighteen, twenty, twenty-three, twenty-nine, thirty, thirty-one, thirty-seven and forty-eight of said report, are also confirmed, as recommended by the register and receiver; number three, is confirmed to two thousand acres, number twenty-four to one thousand acres, and number forty-five to two hundred acres: Provided, That this act shall amount only to a relinquishment on the part of the United States, and shall in no manner affect the rights of third persons, and, on the presentation to the Commissioner of the General Land Office of a plat of survey duly approved by the surveyor-general of the State of Louisiana, the Claimant shall be entitled to a patent.

Act of Congress, June 2, 1858
(11 Stat. 249)

An Act to provide for the Location of certain confirmed Private Land Claims in the State of Missouri, and for other Purposes.

* * *

Sec. 3. . . . in all cases of confirmation by this act, or where any private land claim has been confirmed by Congress, and the same, in whole or in part, has not been located or satisfied, either for want of a specific location prior to such confirmation, or for any

reason whatsoever, other than a discovery of fraud in such claim subsequent to such confirmation, it shall be the duty of the surveyor-general of the district in which such claim was situated, upon satisfactory proof that such claim has been so confirmed, and that the same, in whole or in part, remains unsatisfied, to issue to the claimant, or his legal representatives, a certificate of location for a quantity of land equal to that so confirmed and unsatisfied. . . .

Act of Congress, February 28, 1859
(11 Stat. 387)

An Act to amend an Act entitled "An Act authorizing Repayment for Land erroneously sold by the United States."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of Congress "authorizing repayment for lands erroneously sold by the United States," approved January twelfth, eighteen hundred and twenty-five, be, and the same is hereby amended, so as to authorize the Secretary of the Interior, upon proof being made to his satisfaction, that any tract of land has been erroneously sold by the United States, so that from any cause whatever, the sale cannot be confirmed, to repay to the purchaser or purchasers, or to the legal

representatives or assignees of the purchaser or purchasers thereof, the sum or sums of money, which may have been paid therefor, out of any money in the treasury not otherwise appropriated.

Sec. 2. [And] be it further enacted, That, whenever any tract of land has been erroneously sold, as aforesaid, and the sum or sums of money which may have been paid for the same, shall have been invested in any stocks held in trust, or shall have been paid into the treasury of the United States, to the credit of any trust fund, it shall be lawful by the sale of such portion of the said stocks as may be necessary for that purpose, or out of said trust fund, for repayment of the purchase-money to be made to the parties entitled thereto.

Respectfully submitted,

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